Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30555
Y/nl

_____AD3d_____ Submitted - March 4, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2010-04709 DECISION & ORDER

In the Matter of Carl Henry P. (Anonymous), petitioner-respondent, v Tiwiana L. (Anonymous), appellant; Suffolk County Department of Social Services, respondent-respondent.
(Proceeding No. 1)

In the Matter of Tiwiana L. (Anonymous), appellant, v Carl Henry P. (Anonymous), et al., respondents-respondents.
(Proceeding No. 2)

(Docket Nos. P-1134-10, P-1590-10, P-1591-10, P-1592-10, P-1593-10)

Del Atwell, East Hampton, N.Y., for appellant.

Christine Malafi, Central Islip, N.Y. (Jennifer L. Basile of counsel), for respondent-respondent Suffolk County Department of Social Servivces.

Lynn Poster-Zimmerman, P.C., Huntington, N.Y., attorney for the children.

In related paternity proceedings pursuant to Family Court Act article 5, the mother appeals from an order of the Family Court, Suffolk County (Quinn, J.), dated April 14, 2010, which, without a hearing, in effect, granted the motion of the Suffolk County Department of Social Services pursuant to CPLR 3211(a)(7) to dismiss the petitions.

ORDERED that the order is affirmed, without costs or disbursements.

In these related paternity proceedings, the Family Court granted the motion of the Suffolk County Department of Social Services (hereinafter the DSS) for leave to intervene on the ground that the children were receiving public assistance. The Family Court then granted the motion of the DSS pursuant to CPLR 3211(a)(7) to dismiss the petitions.

"A child born during marriage is presumed to be the biological product of the marriage and this presumption has been described as 'one of the strongest and most persuasive known to the law'" (*Matter of Barbara S. v Michael I.*, 24 AD3d 451, 452, quoting *David L. v Cindy Pearl L.*, 208 AD2d 502, 503 [internal quotation marks omitted]). Moreover, "the doctrine of equitable estoppel is applicable in paternity proceedings and is invoked to preserve the status of legitimacy for the child" (*Matter of Alberto T. v Tammy D.*, 274 AD2d 587, 587).

Here, the subject children, all of whom were conceived and born during the marriage, are presumed to be the legitimate children of the mother and her husband (*see* Domestic Relations Law § 240[1]). Moreover, under the particular circumstances of this case, the Family Court properly applied the doctrine of equitable estoppel and concluded, without a hearing, in effect, that it was in the best interest of the children to preserve their status as legitimate (*see Matter of Alberto T. v Tammy D.*, 274 AD2d at 587). Accordingly, the Family Court properly, without a hearing, in effect, granted the motion of the DSS pursuant to CPLR 3211(a)(7) to dismiss the petitions.

MASTRO, J.P., SKELOS, BALKIN and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court